

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
ARCTIC SENTINEL, INC., formerly)	Case No. 15-12465 (CSS)
known as FUHU, INC., <i>et al.</i> ,)	
)	Jointly Administered
Debtors, ¹)	Re: D.I. 9
)	
)	
)	
)	

**DECLARATION OF SCOTT MILLER IN SUPPORT OF MOTION OF SCOTT
MILLER FOR AN AWARD OF ATTORNEYS’ FEES, COSTS AND
REPRESENTATIVE PAYMENTS
AND RELATED RELIEF**

I, Scott Miller, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

INTRODUCTION

1. I am the court-appointed class representative of a class of purchasers of the Nabi tablets. During the summer of 2012, I purchased a Nabi 2 tablet computer for my grandson. I made the purchase at a Best Buy store. I paid \$199 for the Nabi 2, excluding tax.

2. Before purchasing the Nabi 2, I researched extensively and compared multiple brands of tablets. For example, I reviewed Defendants’ representations that the Nabi 2 tablet was “rechargeable” with an included “power adapter” and that it was made for children, including

¹ The Debtors, together with the last four digits of each Debtor's tax identification number, are: Arctic Sentinel, Inc. [f/k/a Fuhu, Inc.] (7896); Arctic Sentinel Holdings, Inc., [f/k/a Fuhu Holdings, Inc.] (9761); Arctic Sentinel Direct, Inc. [f/k/a Fuhu Direct, Inc.] (2180); and Sentinel Arctic, Inc., [f/k/a Nabi, Inc.] (4119). The location of the headquarters is 1700 E. Walnut Avenue, Suite 500, El Segundo, CA 90245.

that it was “powerful and entertaining enough for adults, but made for kids,” “made especially for kids,” “designed specifically for kids,” and “geared specifically towards kids.” I read these representations on, inter alia, Defendants’ website (<http://nabitablet.com>), including webpages concerning Nabi 2 product information, product specifications, and general information, on the Nabi 2 product packaging, and the Nabi 2 shelf card in the Best Buy store. I additionally reviewed various product reviews on technology websites and retailer web-sites, which contained product descriptions and specifications. In particular, I recall reviewing the following websites prior to my Nabi 2 purchase: wired.com, slashgear.com, bestbuy.com, engadget.com, ubergizmo.com, lilputing.com, and notebookcheck.net.

3. At no time before my Nabi 2 purchase was I made aware that: (i) the Nabi 2 tablet could not be reliably recharged; (ii) the tablet included a defective charging system that would fail to reliably recharge the tablet; (iii) that the tablet could not be used while recharging; or (iv) that the tablet was potentially extremely dangerous to my grandson.

4. Shortly after purchase, and well within the first year of ownership, we began experiencing problems recharging the tablet. More specifically, within the first few weeks following my Nabi 2 tablet purchase, the tablet began to suffer problems recharging; those problems grew over the next several months. At first, when the Nabi tablet was connected via the charger cable to a power outlet, the screen would cycle on and off, and the LED charging indicator would change from red to green and back again. The tablet was chargeable only after a reset was performed. Within a few months thereafter, while the tablet was charging, the screen would flash and it would become very hot while charging, making it dangerous to touch while connected to the charging cable. These problems continued through the end of 2012. By the end of 2012, an additional problem arose: even after the unit had been connected via the charging

cable to a power outlet, allowed to charge, and then disconnected, the unit would not turn on, purportedly because it did not have a “full” charge, which due to the issues described above was difficult to achieve. In addition, even if the unit received a “full” charge, the tablet would abruptly turn off even when the battery still had a significant remaining partial charge. Because of these issues, my grandson could not take the device from my house, including the risk that the grandson could become injured—or start a fire—if the device was charged without careful supervision. Although I had originally intended for my grandson to be able to use, and recharge, the device at his home and in the car, these ordinary uses could not occur. Thus, by the beginning of 2013—or less than six months after my Nabi 2 purchase, the device could no longer be used on a daily basis or in any location other than my home and only sporadically and for short periods of time.

5. I contacted Fuhu about the tablet. Fuhu did not adequately address the charger issue in response to my initial contact.

6. In September of 2013, Fuhu finally sent me a replacement power adapter. The replacement power adapter, however, was also defective. In particular, my grandson was unable to use his Nabi tablet while it is plugged into a power source. When the Nabi tablet is plugged into a power source using the replacement power adapter, the screen goes blank, and the tablet turns off and can only be restarted after it is unplugged from the power source. The Nabi tablet cannot be turned on even after the charging indicator light on the tablet has turned green (indicating a full charge) if it is still connected to an external power source with the power adapter. Because the device continues to abruptly shut off even when it purportedly still has a significant charge remaining on the battery, the device can only be used for short periods—far

shorter than I would have expected. Once again, the tablet cannot be used on a daily basis, or for anything more than short periods of time, nor can I allow my grandson to take it home with him.

7. I would not have purchased the Nabi tablet had Fuhu adequately disclosed to me that had a defective power adapter that would not reliably recharge it and/or that it was potentially dangerous. I received substantially less value from my purchase than I paid.

8. In June 2014, I retained the law firm Gutride Safier LLP (“*GSLLP*”) to bring claims on my behalf and on behalf of similarly situated purchasers. I worked closely with *GSLLP* attorneys to review the complaint before it was filed in California state court. I also reviewed and signed a declaration filed along with the complaint.

9. In September 2014, after Fuhu removed the case to federal court (“*District Court*”), I reviewed the removal papers.

10. In December 2014, I assisted my attorneys in mediation, by preparing a video showing the defective performance of my device and reviewing a long draft mediation statement. I then participated in the mediation by telephone. It was unsuccessful.

11. I then reviewed and commented on a detailed amended complaint. When Fuhu moved to dismiss the amended complaint, I reviewed the motion and the opposition prepared by my attorneys. After a decision was issued on the motion, I reviewed and commented on a draft second amended complaint, which was filed.

12. I regularly sought and received updates from my attorneys regarding the status of discovery and the key facts learned from Fuhu and from the numerous third parties that had been subpoenaed. Among other things I obtained updates about the depositions of Fuhu personnel. I similarly sought and received information from my attorneys about analysis performed by

experts my attorneys had retained. I provided information and physical samples of the tablets to our technical expert, Kendyl Roman, to assist in the preparation of his report.

13. Fuhu served extensive discovery requests on me, including document requests, interrogatories, and requests for admission. In early 2015, I searched for and produced documents. I also worked with GSSLP attorneys to draft written responses, which I verified. Later in 2015, I prepared for and appeared and testified at a deposition, for which I was required to travel from my home in Florida to San Francisco.

14. I worked with GSSLP to prepare a declaration in support of class certification. I also reviewed drafts of the class certification motion and supporting documents. I later reviewed the final filings in support of and in opposition to class certification and discussed strategy with my attorneys.

15. In August 2015, while the motion for class certification was pending, I travelled again to San Francisco, for a second full-day mediation. In preparation for the mediation, I reviewed and commented on mediation statements. Again, the mediation was not successful.

16. In the fall of 2015, I researched several issues to help ensure that there would be sufficient resources available to compensate the class, including (1) Fuhu's shipping manifests and (2) possible claims against Fuhu founder John Hui and its supplier Foxconn.

17. In December 2015, when the Court denied the motion for certification but indicated that a renewed motion could be filed, I discussed with counsel the strategy for that effort.

18. Around the same time, when Fuhu's counsel in the District Court sought leave to withdraw, I discussed the motion with my attorneys.

19. Also in early December 2015, less than a week after the decision on certification, Fuhu filed for bankruptcy. I travelled with counsel to Delaware to seek appointment to the committee of unsecured creditors (“*Creditors’ Committee*”) on behalf of myself and similarly situated persons. I completed the applicable questionnaire, was interviewed by the U.S. Trustee, and was duly appointed.

20. I and my counsel subsequently participated in all meetings of the Creditors Committee. I was heavily involved in interview and selection of committee professionals, including review of work plans and budgets. I also reviewed and participated in telephonic and electronic discussions about objections to the stalking horse bidder, solicitation of additional bidders, review of debtor-in-possession financing terms, analyzing coverages under the Directors & Officers Errors and Omissions policy, forensic examination of Fuhu’s records, selection of the liquidating trustee, and other issues.

21. During the auction process, I reviewed all the competing proposals and stayed in close touch with my counsel who was attending the auction. In particular, I was attentive to two primary issues that concerned the Class but did not directly affect other creditors: (1) assumption by any bidder of consumer warranty obligations and (2) retention by the estate of any applicable insurance policies that could provide coverage for the Class claims. My efforts and those of my counsel led both issues to be resolved favorably during the auction, in that the buyer (Mattel) assumed warranty obligations and the estate retained its policies. I reviewed my counsel’s and other parties’ objections to the proposed sale of assets as well as the draft sale agreements.

22. During the entire bankruptcy proceedings, I have diligently reviewed each and every filing (of which there have been more than 1200 and counting) to keep abreast of the

developments, to ensure that the interests of the Class are protected. I also have tracked expenditures of the estate to attempt to maximize funds available to creditors, of which the Class members comprise the overwhelming majority (in both numbers and total claim amount). I also participated in well over a dozen Creditors' Committee conference calls.

23. In May 2016, I worked with my counsel to prepare a motion for relief from the automatic stay to renew my motion for class certification in the District Court or in this Court. The trustee, in consultation with other members of the Creditors Committee, along with the estate, then reached a stipulation to resolve that motion, which I reviewed and approved, and as a result of which I was appointed representative of the Class and of various subclasses.

24. In June 2016, I worked with my counsel to prepare and approve proofs of claim on behalf of the Class. I again reviewed expert reports of Mr. Roman in support of those proofs of claim.

25. In the spring of 2017, I worked with my counsel to strategize about demands to D&H Distributing Company ("**D&H**"), and its contract manufacturer, Wistron, Inc. ("**Wistron**"), on behalf of the Class. This work included preparation of draft complaints against each entity, which I reviewed and on which I provided comments.

26. Upon dissolution of the Creditors Committee, I was appointed, on behalf of the Class, to serve on the advisory committee to the liquidating trust ("Trust Advisory Committee"). I reviewed the draft trust agreement, participated in numerous conference calls regarding resolution of creditor claims, and helped to supervise the activities of the liquidating trustee and its counsel, to protect the interests of the Class. I subsequently participated in several conference calls of the Trust Advisory Committee and stayed abreast of all committee communications.

27. I have been intimately involved in multiple rounds of settlement discussions. As noted above, in 2014 and 2015, while the case was still in District Court, I participated in mediations, with two different mediators. Each lasted an entire day. I also reviewed detailed mediation submissions from each side. Neither mediation was successful.

28. In 2017, after the creation of the Trust Advisory Committee, I travelled to Las Vegas for two days of settlement discussions on behalf of the Class with the trustee, D&H, and Wistron. Prior to these discussions, I again reviewed and commented on a lengthy written draft statement by my attorneys, and then reviewed written presentations of other parties. The settlement discussions were again unsuccessful.

29. In January 2018, I travelled to New York and participated in a two-day mediation with the trustee, D&H and Wistron before Judge Rosen (Ret.) at JAMS. After conclusion of the mediation sessions, there were many further discussions among the parties regarding the terms of a settlement agreement and supporting documents. I stayed in close touch with counsel throughout this period and reviewed and commented on many drafts. I eventually approved and executed the settlement documentation.

30. Subsequent to the New York mediation, I addressed possible objections by the liquidating trustee to claims by other creditors that could affect the proposed settlement, including claims by ABC, Arima Communications Corporation, and Morgan Stanley. I was particularly involved in strategy discussions regarding Morgan Stanley, which later joined in the settlement.

31. I fully support the settlement, which I believe to be in the best interests of the Class. I believe that the compensation obtained for Class members in the settlement is excellent, particularly given the limitations inherent in a bankruptcy.

32. I reviewed the drafts of the motion to approve the settlement. After preliminary approval was granted, I reviewed and tested the operation of the settlement website and provided comments. I also communicated with counsel regarding the number of claims received.

33. In sum, during the more than six years I have been involved in this case, I have spent more than 800 hours working on the above tasks to advance the interests of the Class. During that period, I had to turn away other work from paying clients. I am a licensed real estate agent (for which I am paid on commission) and have in the past worked as a real estate consultant for which my regular billing rate is \$225 per hour. In addition to giving up an enormous amount of time to supervise the prosecution of this case, I also took on substantial risk. For example, had the case remained in District Court, and had we been unsuccessful, Fuhu could have sought to recover its litigation costs from me personally.

Executed this 30th day of July, 2019, at Auburndale, Florida. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DocuSigned by:
Scott Miller
DA1DA71655724F9

Scott Miller